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FEDERAL COMMUNICATIONS COMMISSION  
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**BY HAND DELIVERY**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Comments of Ursus Telecom Corporation in Support of  
Petition for Rulemaking; RM-9249

Dear Secretary Salas:

Transmitted herewith on behalf of Ursus Telecom Corporation, please find an original plus four (4) copies of the "REPLY COMMENTS OF URSUS TELECOM CORPORATION IN SUPPORT OF PETITION FOR RULEMAKING" to be filed in the above-referenced proceeding.

Please date-stamp the enclosed extra copy of this filing and return it with the messenger to acknowledge receipt by the Commission.

If you have any questions regarding this submission, please do not hesitate to contact me.

Very truly yours,



Helen E. Disenhaus  
Adam L. Kupetsky

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION  
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MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Petition for Rulemaking Of The )  
Telecommunications Resellers Association )  
To Eliminate Comity-Based Enforcement Of )  
Other Nations' Prohibitions Against The )  
Uncompleted Call Signaling Configuration )  
Of International Call-Back Service )

RM -9249

REPLY COMMENTS OF URSUS TELECOM CORPORATION  
IN SUPPORT OF PETITION FOR RULEMAKING

Ursus Telecom Corporation ("Ursus"), by its counsel and pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405 (1997), hereby submits these reply comments in support of the Petition for Rulemaking of the Telecommunications Resellers Association ("TRA")<sup>1</sup> in the above captioned proceeding. Specifically, Ursus replies to the comments of several foreign carriers and governments ("Opponents") opposed to the TRA Petition.<sup>2</sup>

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<sup>1</sup> Petition for Rulemaking of The Telecommunications Resellers Association To Eliminate Comity-Based Enforcement of Other Nations' Prohibitions Against Uncompleted Call Signaling Configuration of International Call-Back Service, RM-9249 (Filed March 19, 1998).

<sup>2</sup> Comments were filed by Telkom SA ("Telkom"), The Regulatory Commission of the Republic of Panama ("Panama"), Philippine Long Distance Telephone Company ("PLDT"), USA Global Link, Inc. ("USA Global Link"), Cable & Wireless, plc ("C&W"), Costa Rican Institute of Electricity ("Costa Rica").

## **I. Introduction**

The Opponents fail to demonstrate why the Commission should continue its policy of enforcing foreign laws against call back. Given the pro-competitive commitments made by the United States and other countries under the WTO Agreement on Basic Telecommunications Services ("WTO Agreement"), the FCC should allow companies based in WTO member states to provide international call back services without reviewing the laws of those states. While Opponents argue that their domestic policy concerns justify FCC enforcement assistance, they fail to recognize that FCC policy, as expressed in FCC orders and the U.S. WTO commitments, is to encourage competition; this policy must drive FCC regulation of call back services. The FCC should ignore transparent attempts by PTTs such as Telkom to justify blatantly anticompetitive conduct through appeals to false domestic policy concerns. If, notwithstanding its pro-competition policies, the FCC continues to enforce foreign laws against call back, it should refuse to do so where (1) U.S. call back providers are subject to unfair regulatory procedures in the foreign country or (2) such enforcement would assist U.S. carriers in impeding competition.

## **II. The WTO Agreement Provides Ample Justification for the FCC to Stop Enforcing Foreign Laws Against Call Back**

Ursus and USA Global Link demonstrated conclusively in their Comments in this proceeding that the WTO Agreement relieves the FCC of any duty to enforce foreign laws against call back. One commenter argues that the FCC must enforce WTO member laws against call back because, if it does not, it would effectively be self-enforcing the WTO Agreement, allegedly violating the WTO principle that disputes should be resolved through WTO dispute

settlement procedures.<sup>3</sup> In fact, if the FCC stopped enforcing foreign laws against call back, it would not be enforcing foreign country WTO commitments but, rather, would be refusing to enforce a foreign law that, in many cases, violates a country's WTO commitments. In other cases, the FCC would merely be exercising its discretion under the principle of comity.<sup>4</sup>

### **III. Call-back Does Not Hinder the Promotion of Universal Service by Depriving Incumbents of Revenue**

The Commission should not abandon its pro-competitive policies based on groundless PTT arguments regarding foreign universal service policies. For example, Telkom argues that, by depriving incumbents of revenue through the loss of traffic and the reduction in international collection rates caused by call back, the activity impedes foreign governments and incumbent carriers from investing in the existing network infrastructure to promote universal service.<sup>5</sup> This argument fails to acknowledge that incumbent carriers are not deprived of revenue by call back, but in fact receive increased international settlement revenue, which may be further increased through the increased traffic volume that results from the lower prices triggered by the availability of call back. Every call initiated through call back mechanisms returns money -- in

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<sup>3</sup> Costa Rica Opening Comments at 10.

<sup>4</sup> Cable & Wireless argues that the United States committed under the auspices of the International Telecommunications Union ("ITU") to inquire into foreign laws against call back and that it would violate this commitment if it stopped enforcing such laws. Cable & Wireless Comments at 6. Unlike commitments made in the WTO Agreement, however, the U.S. agreement under the ITU is not binding. The ITU Resolution only requires member countries to inquire into the basis for possible infringement of foreign law and take actions consistent within the bounds of national law. ITU Plenipotentiary Conference, Resolution 21 (Kyoto 1994) at ¶ 1.

<sup>5</sup> Telkom Opposition at 8; *see also* Panama Opposition at 9.

lucrative U.S. dollars -- directly to the foreign carrier. Where settlement rates are above the FCC's benchmarks, the amount received by the foreign carrier substantially exceeds the costs of terminating the traffic.<sup>6</sup> Further, the reduced prices offered by call back providers increase customer demand for services, which, in turn, offset some or all of the revenue losses faced when consumers choose call back over the incumbent's international service.<sup>7</sup> In short, arguments that the FCC should prohibit call back to protect foreign domestic universal service concerns are baseless because prohibiting call back would not accomplish this goal. The only goal it would accomplish -- and the only result sought by the monopolist -- is to reduce competition.

The Commission should be even more reluctant to enforce foreign laws against call back based on alleged universal service concerns when the PTT expressing such concerns is owned by a U.S. carrier with deep pockets that made the investment knowing full well that customers in the PTT's country are using call back services. U.S. companies seek investment opportunities abroad to make money and will not invest if they believe that they will not be able to carry out the terms of the investment and still make money. Asking the Commission to ban call back to allow that carrier to recoup its investment is akin to asking the FCC, call back operators, and ratepayers to assume the risk of the carrier's investment. The Commission should not be a party to such hypocrisy.

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<sup>6</sup> In addition to these revenue streams, incumbents face competition from call back providers using means other than uncompleted call signaling, such as international toll-free service or direct calling for which the incumbent receives additional compensation.

<sup>7</sup> Moreover, the amount of total IMTS minutes that can be attributed to call back is minimal relative to the total minutes between the United States and most countries, further minimizing any possible revenue reduction resulting from call back.

#### **IV. The FCC Should Not Enforce Foreign Laws Against Call Back When Such Enforcement Violates FCC Public Interest Policies**

If the Commission chooses to continue enforcing laws against call back, it should narrowly tailor its enforcement actions to avoid undermining its public interest policies.<sup>8</sup> First, the FCC should not enforce foreign anti-call back laws when such action would allow a U.S. carrier investor in a foreign monopoly PTT to inhibit competition on a route. As demonstrated above, a U.S. carrier that invests in a foreign monopoly should not receive FCC help in inhibiting competition to further buttress that monopoly, regardless of the foreign policy conditions the U.S. carrier-investor must meet. To grant such a request, the FCC would have to limit U.S. companies from providing service on the route, a result that undermines U.S. policy. Commission policy favors international competition; the Commission should not allow U.S. companies to engage in anti-competitive behavior disguised as "fair play."

Second, the FCC should not enforce foreign laws or regulations explicitly prohibiting call back that resulted from a regulatory process from which call back providers were excluded. Under no circumstances should the Commission recognize a foreign law or regulation unless it was enacted through a transparent process, with a fair and adequate opportunity for comment before an impartial decision maker.<sup>9</sup> While some countries may not routinely follow these due

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<sup>8</sup> It is acceptable in some circumstances for the Commission to notice the laws of foreign states, so long as it uses its power judiciously. For instance, the Commission should not assist the foreign country in retreating from international commitments that a country may have made, as that would defeat the Commission policy of promoting international competition.

<sup>9</sup> Alternatively, the FCC should examine whether the laws or regulations were promulgated in accordance with the country's procedural requirements and their WTO commitments.

process principles, the Commission must consider whether its own sense of due process is not offended before using its resources to assist in the enforcement of a foreign regulation. The principle of comity does not require a nation to enforce another's laws to the detriment of its own laws and policies. The FCC should not recognize anti-call back laws or regulations unless the regulatory process by which they were promulgated indicates that the call back provider had a fair and adequate opportunity to participate in that process.<sup>10</sup>

Nor should the Commission enforce any anti-call back law until it is final and nonappealable. In many instances, the validity of a particular foreign regulation or statute may be an issue for a foreign tribunal.<sup>11</sup> While appeals are proceeding, the call back providers should feel secure in the knowledge that while they pursue their commercial interests abroad, the Commission will not outlaw call back at home.

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<sup>10</sup> The WTO Agreement requires transparency of process, including publication of relevant regulations, as a general obligation of signatory nations. *See* WTO Agreement, Article III.

<sup>11</sup> Telkom Opposition at 9.

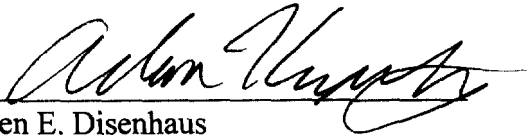
**V. Conclusion**

Ursus applauds the Commission's pro-competitive policies and its historic support of international resale in general and international call back in particular. As a result of the WTO agreement, many foreign governments adopted the FCC's positive outlook on competition. The Commission should build on this momentum by continuing to encourage and allow competition in the U.S. international market, including the provision of international call back services. As U.S. based service providers, call back operators should not be shut down by the FCC based on specious, hypocritical arguments by foreign monopolists or by governments that exclude all but the government-owned or protected PTT from participating in the establishment of call back related laws and regulations.

Respectfully submitted,

URSUS TELECOM CORPORATION

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May 22, 1998



## **CERTIFICATE OF SERVICE**

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